



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**XXX,<sup>1</sup>**

Petitioner,

**G.R. No. 242101**

Present:

- versus -

CARPIO, J., \* *Chairperson*,  
 CAGUIOA,  
 J. REYES, JR.,  
 LAZARO-JAVIER, and  
 ZALAMEDA, JJ.

**PEOPLE OF THE PHILIPPINES,**  
 Respondent.

Promulgated:

**16 SEP 2019**

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**DECISION**

**CAGUIOA, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>2</sup> filed by the petitioner XXX assailing the Decision<sup>3</sup> dated April 24, 2018 and Resolution<sup>4</sup> dated August 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39824, which affirmed the Decision<sup>5</sup> dated April 10, 2017 of the Regional Trial Court of Valenzuela City (RTC) in Criminal Case No. 1350-V-12, finding XXX guilty beyond reasonable doubt of Acts of Lasciviousness, defined and punished under Article 336 of the Revised Penal Code (RPC).

\* Acting Chief Justice as per Special Order No. 2703 dated September 10, 2019.

<sup>1</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>2</sup> *Rollo*, pp. 12-23.

<sup>3</sup> Id. at 51-59. Penned by then CA Associate Justice Ramon Paul L. Hernando (now a member of this Court), with Associate Justices Marlene B. Gonzales-Sison and Pedro B. Corales concurring.

<sup>4</sup> Id. at 79-80.

<sup>5</sup> Id. at 24-37. Penned by Presiding Judge Evangeline M. Francisco.

### The Facts

An Information was filed against XXX for committing lascivious acts against AAA,<sup>6</sup> which reads:

That on or about August 3, 2012, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the step-father of complainant-minor AAA[,] 14 years old (DOB: July 18, 1998) with lewd design and malice, by means of force or intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon complainant-minor, by touching her breast against her will and without her consent.<sup>7</sup>

During the arraignment, XXX pleaded not guilty to the crime charged. Trial on the merits then ensued.

### *Version of the Prosecution*

The version of the prosecution, as summarized by the CA, is as follows:

AAA, the private complainant in this case, was 14 years old then when the subject incident happened on April 28, 2012 in their house located at ABC Street, Valenzuela City. At that time, she lived with her mother BBB, her step-father (herein accused-appellant) and siblings.

At around one o'clock in the afternoon of April 28, 2012, she was about to pick up something from the floor in one of the rooms of their house when without any warning, accused-appellant approached her from the back. When she turned to face him, the accused-appellant grabbed the lower end of her t-shirt, inserted his hands inside and touched her breast while he uttered the words "*pahawak nga*". She immediately parried accused-appellant's hands to resist it. Accused-appellant then tried to pull down her shorts but she held on to the sides of it to prevent him from stripping it off. Thereafter, she ran towards the kitchen where her mother was. She was teary eyed and about to cry when her mother asked her what was wrong. However, she did not say anything because she was afraid that the accused-appellant might kill or hurt them as he had laid his hands on her mother before.

While she was crying and trembling from shock and fear, she went outside and called her boyfriend CCC to tell him about her ordeal. She decided to go to the house of DDD, her biological father, in Bulacan but the latter was not there at that time. She then texted her mother saying "Yung asawa mo, hayup yan, yung ginawa niya sakin". Her mother called her and she narrated what happened between her and the accused-appellant. Her mother cried profusely upon knowing of the incident and advised her to go home so they could file a case against the accused-appellant. Thus, she went home as per her mother's instruction and together, they went to the Valenzuela City Police Station to file a complaint against the accused-appellant.<sup>8</sup>

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<sup>6</sup> See note 1.

<sup>7</sup> Id. at 52.

<sup>8</sup> Id.



On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

At around one o'clock in the afternoon of April 28, 2012, accused-appellant was in their house located in ABC Street, Valenzuela City where he lived together with his wife BBB, his kids and AAA, his step-daughter and herein private complainant. During that time, his wife, BBB, was in the kitchen cooking food for lunch. However, when they were about to eat, AAA was nowhere to be found. At around 1:30 to 2 o'clock in the afternoon, BBB called private complainant to ask her where she was. Over the phone, private complainant kept on saying "*ang walang hiya mong asawa*" while crying. BBB advised private complainant to go home so that they could file a case against accused-appellant.

Thereafter, when accused-appellant was preparing to go to work, his wife, who was crying, approached him and said "*anong ginawa mo?*" to which he replied that he did nothing wrong to AAA. He denied the allegations of AAA and declared that she made the said accusation only because of a previous misunderstanding as he did not allow private complainant's boyfriend to spend a night in their house on April 13, 2012 after their family outing. The said incident angered private complainant and she developed resentment against him.<sup>9</sup>

### **Ruling of the RTC**

After trial on the merits, in its Decision<sup>10</sup> dated April 10, 2017, the RTC convicted XXX of the crime charged. The dispositive portion of the said Decision reads:

**WHEREFORE** (*sic*), in the light of the foregoing, judgment is hereby rendered finding accused [XXX] guilty beyond reasonable doubt for Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code and he is hereby sentenced to suffer the penalty of four (4) years, minimum to five years, maximum, imprisonment and to indemnify [AAA] the amount of Php 50,000.00 and to pay moral damages in the amount of Php 50,000.00

SO ORDERED.<sup>11</sup>

The RTC found AAA to be consistent and convincing in her testimony that on the date in question, XXX inserted his hand under her shirt and bra and touched her breast.<sup>12</sup> The RTC held that AAA's positive and categorical testimony could not be overturned by the mere denial of XXX. Further, XXX's allegation that AAA only fabricated the story to be able to live with her boyfriend at the time did not persuade the RTC. The RTC found it unbelievable for a woman of a young age to concoct a story that would bring

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<sup>9</sup> Id. at 53.

<sup>10</sup> Supra note 5.

<sup>11</sup> *Rollo*, p. 37.

<sup>12</sup> Id. at 35.



shame or embarrassment to her, moreso if it would be found later on that the matters she was testifying about were not true.<sup>13</sup>

XXX thereafter appealed his conviction to the CA.

### **Ruling of the CA**

In the questioned Decision<sup>14</sup> dated April 24, 2018, the CA affirmed the RTC's conviction of XXX.

The CA held that the supposed inconsistencies between AAA's *Sinumpaang Salaysay* and her testimony in court relied upon by XXX referred to minor and peripheral details which did not touch upon the central fact of the crime. The CA opined that the minor inconsistencies, instead of weakening AAA's credibility, even strengthened her testimony as they erased suspicion of a rehearsed testimony.<sup>15</sup> The CA likewise ruled against XXX's contention that AAA's demeanor, *i.e.*, the fact that AAA did not scream for help, was inconsistent with "normal human conduct and behavior." It noted that different people react differently to the same situation, and that not every victim could be expected to act in the same manner or in consonance with the expectation of mankind.<sup>16</sup>

With regard to XXX's contention that AAA only concocted the story because he prohibited AAA's boyfriend from staying over at their house one night, the CA stated:

Furthermore, We must brush aside as flimsy the accused-appellant's insistence that the charge was merely concocted by the private complainant because the latter was mad at him for not letting her boyfriend CCC stay for a night in their house. It is unthinkable for private complainant, who looked up to [accused-appellant as her own father,] to accuse him and to put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule, had she really not have been aggrieved. Nor do We believe that the private complainant would fabricate a sordid story simply because she wanted to exact revenge against her step-father, accused-appellant herein, for allegedly scolding her for insisting to let her boyfriend sleep in their house.<sup>17</sup>

The CA thus affirmed XXX's conviction for Acts of Lasciviousness, defined and punished under the RPC. The CA, however, modified the penalty imposed on XXX as the RTC erred in applying the Indeterminate Sentence Law. Thus, the dispositive portion of the CA Decision reads:

**WHEREFORE**, the instant appeal is **DENIED**. The assailed Decision dated April 10, 2017 of the Regional Trial Court (RTC), Branch

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<sup>13</sup> Id. at 36.

<sup>14</sup> Supra note 3.

<sup>15</sup> *Rollo*, p. 55.

<sup>16</sup> Id. at 56

<sup>17</sup> Id.



270 of Valenzuela City in Criminal Case No. 1350-V-12 is hereby **AFFIRMED** with **MODIFICATION** as to the proper penalty and the amount of damages awarded. The accused-appellant [XXX] is hereby sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is likewise ordered to pay private complainant AAA the following: (a) PhP 20,000.00 as civil indemnity; (b) PhP 20,000.00 as moral damages; and (c) PhP 15,000.00 as exemplary damages. The amounts of damages awarded shall earn an interest of 6% per *annum* from the date of finality of judgment until fully paid.

**SO ORDERED.**<sup>18</sup>

XXX filed a motion for reconsideration of the Decision, which was, however, denied by the CA in a Resolution<sup>19</sup> dated August 29, 2018.

Hence, the instant appeal.

### **Issue**

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting XXX.

### **The Court's Ruling**

The appeal is denied. The Court, however, modifies XXX's conviction from "Acts of Lasciviousness defined and penalized under Article 336 of the [RPC]"<sup>20</sup> to "Lascivious Conduct under Section 5(b) of Republic Act No. 7610."

***The prosecution sufficiently established XXX's guilt beyond reasonable doubt***

In professing his innocence, XXX relies heavily on supposed inconsistencies between AAA's *Sinumpaang Salaysay* and her testimony in court. XXX's theory is that because of this inconsistency, AAA's testimony is no longer believable — thereby weakening the case against him — and his alibi and denial therefore already constitute reasonable doubt on his guilt. He argues:

A perusal of the records would show that that (*sic*) the Salaysay of private complainant and her testimony in court is full of inconsistencies.

Notably, private complainant testified that after the alleged incident, she immediately ran to her mother who was then cooking in the kitchen, but was not able to tell her mother what happened as she allegedly feared that

<sup>18</sup> Id. at 59.

<sup>19</sup> Supra note 4.

<sup>20</sup> *Rollo*, p. 37.

petitioner might hurt her mother. Instead, she allegedly went to her biological father in Bulacan. But still she did not told (*sic*) her mother what happened.

Indeed, during the hearing she only stated that she merely texted her mother but failed to make a detailed narration.<sup>21</sup>

In the Court's view, however, the inconsistencies referred to, if indeed they exist, pertain to trivial matters which do not affect the central fact of the crime. As the CA succinctly explained:

As regards the alleged inconsistencies in private complainant's *Salaysay* and testimony on whether she called first or texted his mother, We find these to be totally inconsequential. The debate as to whether she called her mother first to narrate the subject incident or texted her "Yung asawa mo, hayup yan, yung ginawa niya sakin" is not relevant to the unlawful act committed by the accused-appellant. The alleged inconsistencies cannot negate the testimony of the private complainant which has been consistent with respect to the fact that accused-appellant, without her consent, forcefully touched her breasts.

Moreover, discrepancies between the affidavit of a witness and her testimony in court do not necessarily discredit her because it is a matter of judicial experience that [affidavits], being taken *ex-parte* are almost always incomplete and often inaccurate. Minor variances in the details of a witness' account, more frequently than not, are badges of truth rather than *indicia* of falsehood and they often bolster the probative value of the testimony.<sup>22</sup>

The Court held in *People v. Villanueva*:<sup>23</sup>

Indeed, neither inconsistencies on trivial matters nor innocent lapses affect the credibility of witnesses and the veracity of their declarations. On the contrary, they may even be considered badges of truth on material points in the testimony. The testimonies of witnesses must be considered and calibrated in their entirety and not in truncated portions or isolated passages.<sup>24</sup>

In this connection, the Court holds that AAA's testimony on the material aspects of the crime are believable, credible, and worthy of full faith and credence. Her testimony on the act complained of was as follows:

Pros. Fajardo:

At this point, Your Honor, may I put on record that the witness is crying already.

Q *Okay, tapos, may pinulot ka?*

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<sup>21</sup> Id. at 18.

<sup>22</sup> *Rollo*, pp. 55-56.

<sup>23</sup> *People v. Villanueva*, 456 Phil. 14 (2003).

<sup>24</sup> Id. at 23.



A Upon picking up the litter, I turned my back and my stepfather was there, Sir.

Q By the way, at that time, what were you wearing?

A I was wearing shorts and t-shirt, Sir.

Q *Shirt na may manggas?*

A Yes Sir.

Q *Tapos, short na maikli?*

A Yes, Sir.

Court:

Q How old were you then?

A Thirteen po.

Pros. Fajardo:

Q And then when you turned your back, you noticed that your stepfather was at your back, what was he doing at that time?

May I put on record that the witness at this point is still crying.

A He grabbed my clothes, inserted his hands inside my clothes and reached out for my breast, Sir, but I tried to parry his hands.

Q How did you do that when his hand was already there inside?

Court:

Q Where was he, in front of you or from your back?

A He was in front of me, Your Honor.

Prof. Fajardo:

Q In other words, when you picked up a thing, what was that, *ano yung pinulot mo?*

A *Pinulot ko po tapos po nilagay ko po sa taas ng damitan, pagtalikod ko po nandun na po siya.*

Q *Pagtalikod mo, yun na magkaharap na kayo?*

A Yes, Sir.

Q And then?

Court:

Q From where did he insert his hands, under your shirt or over here?

A Under po.

Pros. Fajardo:

Q And then *paano mo sinalag halimbawa nakapasok na yan?*  
A I hit his hand down, Sir.

Q *Sinuntok mo?*  
A Yes Sir.

Court:

Q Were you wearing [a] bra?  
A Yes, Your Honor.

Pros. Fajardo:

Please compose yourself for a second, *kaya mo na ba magsalita ulit?*

Witness:

*Opo*

Pros. Fajardo:

Q *Sinalag mo*, you whisked away his hands, and while your stepfather was inserting his hands, what did you say, if any?  
A When I was whisking his hands away, he said, "*pahawak nga*" and after that he tried to pull my shorts down.

Q How did he hold your shorts?  
A He pulled it down.

Q *Ah ginanun niya...?*  
A *Opo, pero hindi naman po niya nababa kasi hinaha[wa]kan ko po.*<sup>25</sup>

Verily, no matter what she did subsequent to the events narrated above is immaterial to the fact that the crime was already committed. In addition, it is worth emphasizing that sexual abuse is a painful experience which is oftentimes not remembered in detail.<sup>26</sup> Such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving. Rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget.<sup>27</sup> Thus, a victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.<sup>28</sup>

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<sup>25</sup> *Rollo*, pp. 30-32.

<sup>26</sup> *People v. Saludo*, 662 Phil. 738, 753 (2011).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*





Thus, the inconsistencies, if any, pointed out by XXX would not exculpate him from the crime.

XXX cannot likewise rely on the Affidavit of Desistance<sup>29</sup> dated October 23, 2013 executed by AAA as the basis for his acquittal. It must be noted that, subsequent to the execution of the Affidavit of Desistance, AAA still took the witness stand on July 26, 2016 to testify against XXX.<sup>30</sup> Thus, the Court's ruling in *Madali v. People*<sup>31</sup> finds application:

x x x **The affidavit of recantation executed by a witness prior to the trial cannot prevail over the testimony made during the trial. Jovencio effectively repudiated the contents of the affidavit of recantation.** The recantation would hardly suffice to overturn the trial court's finding of guilt, which was based on a clear and convincing testimony given during a full-blown trial. As held by this Court, an affidavit of recantation, being usually taken *ex parte*, would be considered inferior to the testimony given in open court. A recantation is exceedingly unreliable, inasmuch as it is easily secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.<sup>32</sup> (Emphasis and underscoring supplied)

All told, the evidence at hand establishes beyond reasonable doubt that XXX did the acts imputed against him.

***Nomenclature of the crime committed and the penalty to be imposed on XXX***

From these factual findings, the RTC and the CA convicted XXX only of "Acts of Lasciviousness defined and penalized under Article 336 of the [RPC]," and ultimately imposed on him the "indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum"<sup>33</sup> because Article 336 of the RPC imposes only *prision correccional* as the penalty for Acts of Lasciviousness.

The penalty to be imposed upon XXX should, however, be modified in accordance with the Court *en banc*'s Decision in the case of *People v. Tulagan*<sup>34</sup> (*Tulagan*), which held that:

In *People v. Caoili*, We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5 (b) of R.A. No. 7610, and in determining the imposable penalty:

<sup>29</sup> *Rollo*, p. 81

<sup>30</sup> *Id.* at 70.

<sup>31</sup> 612 Phil. 582 (2009).

<sup>32</sup> *Id.* at 602-603.

<sup>33</sup> *Rollo*, p. 59.

<sup>34</sup> G.R. No. 227363, March 12, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be “Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610.” Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

**3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as “Lascivious Conduct under Section 5(b) of R.A. No. 7610,” and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.** (Emphasis and underscoring supplied)

Despite the *ponente*'s reservations<sup>35</sup> on the conclusions reached in *Tulagan* on the accused's right to due process, the *ponente* respects that *Tulagan* is the standing doctrine. Thus, the penalty to be imposed on XXX should be modified accordingly.

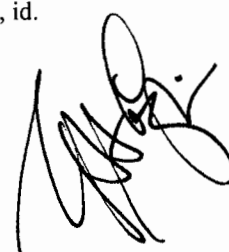
With regard to the amount of damages, the Court likewise deems it proper to adjust the award of damages in consonance also with *Tulagan*. Thus, XXX is hereby ordered to pay AAA, the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.<sup>36</sup> Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.<sup>37</sup>

**WHEREFORE**, in view of the foregoing, the Decision dated April 24, 2018 and Resolution dated August 29, 2018 of the Court of Appeals in CA-G.R. CR No. 39824 are hereby **AFFIRMED WITH MODIFICATION**. The petitioner XXX is found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the indeterminate penalty of imprisonment of fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is likewise ordered to pay AAA the amounts of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity, FIFTY

<sup>35</sup> See Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *People v. Tulagan*, id.

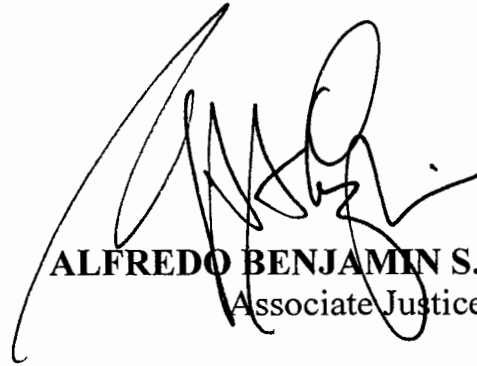
<sup>36</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019, id.

<sup>37</sup> *People v. Arcillas*, 692 Phil. 40 (2012).



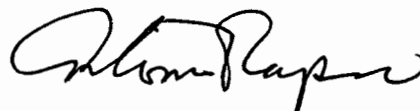
THOUSAND PESOS (₱50,000.00) as moral damages, and FIFTY THOUSAND PESOS (₱50,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this Decision until full payment is likewise imposed.

**SO ORDERED.**

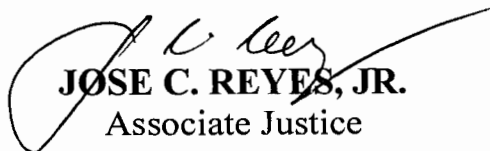


**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:



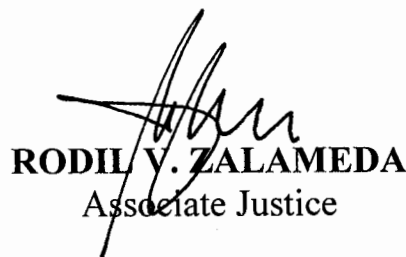
**ANTONIO T. CARPIO**  
Acting Chief Justice  
Chairperson



**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice

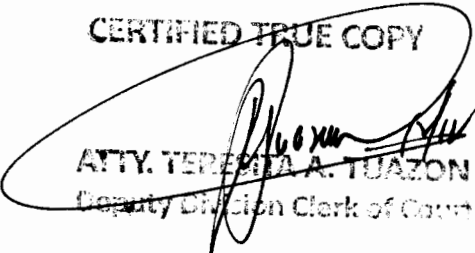
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Chairperson, Second Division  
and Acting Chief Justice

CERTIFIED TRUE COPY



**ATTY. TERESITA A. TUAZON**  
Deputy Division Clerk of Court